

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SHAN ZHAO,

Plaintiff,

-vs-

04-CV-467-JTC(JJM)

KALEIDA HEALTH AND
AARON KOPINSKI,

Defendants.

The above-referenced case was referred to United States Magistrate Judge Jeremiah J. McCarthy to conduct pre-trial matters and to hear and report on dispositive motions, pursuant to Title 28 U.S.C. § 636(b)(1)(A), (B) and (C).

On July 20, 2007, Judge McCarthy filed a Report, Recommendation and Order (Item 91) in which he recommended that defendants' motions for summary judgment be granted, and that plaintiff's cross-motion for partial summary judgment be denied. Judge McCarthy also ordered that defendants' motions to strike the report and testimony of plaintiff's expert witness be granted.

Plaintiff filed objections to the Report, Recommendation and Order on September 28, 2007, and defendants filed a response on November 16, 2007.

Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72 of the Federal Rules of Civil Procedure, this court must make a de novo determination of those portions of the Magistrate Judge's disposition to which objections have been made. Upon de novo review of the Report, Recommendation and Order, the record in this case, and the pleadings and materials submitted by the parties, the court accepts and adopts in full Judge McCarthy's

proposed findings and recommendations with respect to the dispositive motions, and finds no part of the order with respect to nondispositive matters to be clearly erroneous or contrary to law.

Accordingly, for the reasons set forth in Magistrate Judge McCarthy's Report, Recommendation and Order, it is hereby ordered that:

- (1) Defendants' motions for summary judgment (Items 42 and 48) are granted, and the complaint is dismissed in its entirety.
- (2) Plaintiff's cross-motion for partial summary judgment (Item 57) is denied.
- (3) Defendants' motions to strike the report and testimony of plaintiff's expert witness (Items 72 and 76) are granted.

The Clerk of the Court is directed to enter judgment in favor of defendants.

So ordered.

\s\ John T. Curtin
JOHN T. CURTIN
United States District Judge

Dated: 2/2 , 2008
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